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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.S.,

a Person Coming Under the Juvenile Court Law.

B221696
(Los Angeles County
Super. Ct. No. TJ18067)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.S.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County,
Catherine J. Pratt, Commissioner. Affirmed as Modified.

Torres & Torres and Tonja R. Torres, under appointment by the Court of
Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Keith H.
Borjon and Sharlene A. Honnaka, Deputy Attorneys General, for Plaintiff and
Respondent.

Appellant A.S. appeals from the juvenile court's orders declaring her a ward of the court under Welfare and Institutions Code section 602¹ and placing her home on probation. She contends that the maximum confinement time imposed by the court -- seven years -- must be stricken from the disposition order. Respondent concedes the issue, and we agree. We therefore order the maximum confinement time stricken and otherwise affirm.

BACKGROUND

The juvenile court sustained the allegations of the section 602 petition which alleged that appellant committed assault by means likely to produce great bodily injury on D.D. (Pen. Code, § 245, subd. (a)(1)) and that she personally inflicted great bodily injury on the victim (Pen. Code, § 12022.7, subd. (a)). We briefly summarize the evidence at the adjudication hearing.

Prosecution

Appellant and D.D. were romantically interested in the same boy, John. Following a dispute in which John sent text messages to appellant while D.D. was present, D.D. told John and her sister that she wanted to fight appellant.

A few days later, on December 9, 2008, D.D., appellant, and others were at the home of a male friend, Beaudreaux, in Compton. D.D. and appellant argued over whether John had "played" them. D.D. noticed a knife in appellant's back pocket. They ultimately decided to go outside and fight. They engaged in a fistfight, until D.D. noticed that she was bleeding and had difficulty moving her arm. She saw that she had been stabbed and stopped fighting. Appellant ran off with the knife.

¹ All undesignated section references are to the Welfare and Institutions Code.

D.D. was stabbed six times. Each wound required stitches, and she was in the hospital for six days. One wound to her left arm severed nerves and tendons, causing permanent damage to her hand.

Defense

Beaudreaux and La'Tasha S. (appellant's cousin) witnessed the fight. They testified that D.D. was on top of appellant, punching her in the head, and they never saw appellant stab D.D., though D.D. was bleeding. Appellant testified that she was afraid of D.D. and did not want to fight her. Before the fight, she had put a paring knife in her pocket. While D.D. was on top of her during the fight, she waved the knife above her head not trying to cut D.D. but trying to get her off. She did not realize D.D. had been stabbed until after the fight.

DISCUSSION

The juvenile court placed appellant home on probation subject to various terms and conditions. The court also set a maximum confinement time of seven years (4 years for the assault, plus 3 years for the great bodily injury). However, as appellant contends and respondent concedes, setting a maximum term of confinement is improper when the juvenile is not removed from the physical custody of the parents or custodian. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.) We therefore order the maximum term of confinement stricken from the disposition order.

DISPOSITION

The maximum term of confinement is stricken from the disposition order. In all other respects the judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.